

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	No. 08 CR 122
)	08 CR 123
)	07 GJ 52
v.)	
)	
BARRY WARE,)	
aka "B", "Buckethead", "Beanhead")	
"Sweet Nuts", and Penelope;)	
GREGORIO RODRIGUEZ,)	
aka "George";)	
GARY McDONALD,)	
aka "Worm";)	
DEVON TYLER,)	
aka "D";)	
GERALD LINDSEY,)	
aka "Worm";)	
KEVIN WADDELL,)	
aka "KK", "Benny", and "Soda Pop";)	
TERRY PETEN,)	
aka "T" and "Marv";)	
MELVIN HOLMES;)	
JERMAINE McCANN;)	
BOBBY MITCHELL,)	
aka "Mitch";)	
LAQUINTA MOFFETT,)	Hon. Rebecca Pallmeyer
aka "LuLu", "Big Girl", and "Quinta"; and)	Acting Chief Judge
HOWARD BLANKENSHIP,)	
aka "Fats")	

**GOVERNMENT'S FIRST MOTION FOR AN EXTENSION OF TIME TO RETURN
INDICTMENT PURSUANT TO 18 U.S.C. § 3161(h)**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully moves this Court, pursuant to 18 U.S.C. § 3161(h)(8), for a 30-day extension of time, to and including April 11, 2008, in which to seek the return of an indictment against the defendants, for the following reasons:

1. This investigation was initiated in January 2007, and involves at least 11 individuals whom the government charged by way of complaint on February 11, 2008, with conspiring to possess with intent to distribute and to distribute more than 5 kilograms of cocaine, and 50 grams of crack cocaine, in violation of Title 21, United States Code, Section 846 (*United States v. Ware, et al.*, 08 CR 122), and 1 individual whom the government charged by way of complaint February 11, 2008, with distribution of 50 grams or more of crack cocaine, in violation of Title 21, United States Code, Section 841(a)(1) (*United States v. Blankenship*, 08 CR 123). As outlined in the complaints, BARRY WARE is the leader of the WARE drug trafficking organization (hereinafter “the WARE Organization”). Based on the investigation to date, the WARE Organization is responsible for the distribution of wholesale quantities of controlled substances, namely cocaine and crack cocaine, in the Joliet, Illinois area.

2. Part of this investigation utilized Court-authorized Title III intercepts. Thousands of phone calls were intercepted during the wiretaps in this case, which occurred between April 2007 and June 2007, and October 2007. The investigation also resulted in numerous seizures of narcotics and narcotics proceeds from many of the defendants.

3. Beginning on February 12, 2008, and concluding on February 15, 2008, the 12 defendants named in the complaints filed on February 11, 2008 were arrested. Of those 12 defendants, 6 are presently in custody, and 5 have been released on bond. Of the 12 defendants who have been arrested, all 12 have waived preliminary hearing.

4. A number of factors have led to the government’s request for extension. Those factors are stated in the Attachment hereto, which the government respectfully requests be placed under seal. The government is requesting that this Attachment be sealed so as not to compromise

its ongoing investigation and so as not to reveal matters occurring before the Grand Jury.

5. Given the number of defendants involved (12 currently, with more possibly to be added), the length of time that this investigation has been ongoing, and the additional reasons stated in the government's sealed Attachment, the thirty days available to the government pursuant to Title 18, United States Code, Section 3161(b) in which to file an indictment or information against a defendant based on his arrest will not be sufficient. The United States estimates that 30-day extension from the current expiration date of March 13, 2008, to and including April 11, 2008, will be sufficient time within which to return an indictment in this matter.

6. Among the factors identified by Congress as relevant to the determination whether time should be extended for indictment are those set forth in 18 U.S.C. § 3161(h)(8)(B), which provide in relevant part:

Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because . . . the facts upon which the grand jury must base its determination are unusual or complex; [and]

Whether the failure to grant such continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), . . . would deny counsel for . . . the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

18 U.S.C. §§ 3161(h)(8)(B)(ii), (iv).

7. The government respectfully submits that the 30-day continuance is warranted in this case pursuant to the forgoing provisions. The government has been conducting a diligent and thorough investigation in this case, but the investigation includes 12 (charged) defendants and thousands of intercepted phone calls, and additional factors warranting an extension of time (as cited in the government's Attachment) exist. The government cannot complete its investigation and

appropriately conclude the investigation within the time allowed under Section 3161(b) of the Speedy Trial Act as currently extended.

8. Following telephone calls made on March 7, 2008, counsel for the following defendants have represented that they do not object to this motion: GERALD LINDSEY, KEVIN WADDELL, TERRY PETEN, MELVIN HOLMES, BOBBY MITCHELL, and HOWARD BLANKENSHIP. Counsel for the following defendants have not responded to the government's telephone calls regarding their position on this motion: BARRY WARE, GREGORIO RODRIGUEZ, GARY McDONALD, DEVON TYLER, JERMAINE McCANN, and LAQUINTA MOFFETT.

WHEREFORE, the United States respectfully requests a 30-day extension of time from March 13, 2008 to and including April 11, 2008 in which to seek an indictment in this case.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: /s/ Terra L. Brown
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Dated: March 10, 2008

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NORTHERN DISTRICT OF ILLINOIS
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ORDER

Upon the Government's Motion, under Title 18, United States Code, Section 3161(h)(8)(A) & (B), for an extension of time in which to return an indictment in the above-captioned cause,

IT IS HEREBY ORDERED that the time within which to file an indictment against the defendants be extended from March 13, 2008 to and including April 11, 2008. Specifically, this Court finds that the ends of justice served by the extension outweigh the best interests of the public

and the defendants in a speedy trial because the failure to grant such an extension would deny the government the reasonable time necessary for effective preparation of the evidence for presentation to the Grand Jury, taking into account the exercise of due diligence.

ENTERED:

REBECCA PALLMEYER
Acting Chief Judge

DATED: March ___, 2008